IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL REVISION NO.1447 OF 2006

DATE OF DECISION: FEBRUARY 07, 2007

Prithipal Singh

.....Petitioner

VERSUS

Inderjit Kaur

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr.B.B.S.Sobti, Advocate,
for the petitioner.

Ms.Inderjit Kaur,
respondent in person.

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RANJIT SINGH, J.

The petitioner, Prithipal Singh, being aggrieved against the order dated 8.5.2006 passed by Judicial Magistrate Ist Class, Ludhiana, granting interim maintenance of Rs.2000/- per month to respondent, Inderjit Kaur, his wife, has filed this revision petition.

The marriage between the petitioner and respondent, Inderjit Kaur, was solemnized on 5.12.1997. A daughter was born out of this wed-lock on 7.9.1998. Apparently, the couple could not pull along well. The respondent-wife made allegations of demand of dowry, taunting and harassment. It is further alleged that the petitioner-husband, on instigation of his mother, demanded a

sum of Rs.two lacs for construction of a shop and promotion of his business. Refusal on the part of the respondent, led to her beating. She, thereafter went to her parental house and narrated her ordeal. A Panchayat was convened but the petitioner and his mother refused to rehabilitate the respondent. A sum of Rs.50,000/- was also allegedly paid and thereafter the wife was permitted to live in the matrimonial house till January 2000. Harassment and humiliation was followed even thereafter. The respondent has further alleged that a flat owned by her was sold for Rs.1,50,000/- and the money was utilised for construction of a house by the petitioner. As per the allegations, the demand of money and use of criminal force was usually resorted to against the wife, which led to her being turned out of her matrimonial home alongwith minor child. Ultimately, the wife filed a complaint to the Senior Superintendent of Police on 21.8.2000. When this complaint was entrusted to DSP Gurmail Singh, he summoned the parties to his office on 25.8.2000. A compromise was reached before the DSP to the effect that parties would file a petition under Section 13-B of the Hindu Marriage Act (hereinafter referred to as "the Act") and the petitioner would pay a sum of Rs.2,10,000/- as permanent alimony. It is conceded that the dowry articles were returned by the petitioner and he took time to arrange for the money which he had agreed to pay. Sh.Anil Kaushal, Advocate, was engaged as a counsel to draft a petition under Section 13-B of the Act. The couple had put their signatures on the said petition. The parties agreed to file this petition in the Court after payment of money by the petitioner-husband, which he had agreed in terms of compromise.

Claiming that the petitioner-husband did not honour the compromise and the respondent-wife did not have any source of income, the wife filed an application under Section 125 Cr.P.C. for grant of maintenance and litigation expenses. Respondent-wife complains that the petitioner refused to pay the permanent alimony as agreed and had come to her, offering to rehabilitate her with minor child. As per the respondent-wife, on this pretext, the husband was able to abduct the minor child from her house as she was getting ready to leave in order to live with the husband. In this regard, she filed a case of abduction before the police and even filed a writ petition before this Court. The writ petition was disposed of with liberty to approach the Court of competent jurisdiction for custody of the child. The respondent-wife says that she could not litigate for custody of the child because of lack/paucity of resources. She has appeared in person to argue this case before this Court. The Judicial Magistrate Ist Class, Ludhiana, having regard to the rival contentions raised before him, has granted Rs.2,000/- per month as maintenance and Rs.2,000/- as litigation expenses vide order dated 8.5.2006. Hence, the present revision.

While issuing notice of motion in this case, the parties were directed to be present in Court. On 16.11.2006, it was found that the matrimonial dispute could finally be resolved by some mutual understanding. The case was adjourned for submission of proposal and counter proposal. However, on 14.12.2006, both the parties found the proposal and counter proposal to be unacceptable to each other and accordingly, the issue could not be resolved by way of compromise. The case is accordingly heard on merits.

Mr.B.B.S.Sobti, learned counsel for the petitioner contends that the impugned order is unsustainable in law being in violation of the provisions of Section 125 (4) Cr.P.C. The counsel would contend that the facts in this case would reveal that the parties are living separately by mutual consent. He, as such, would say that in such an eventuality, respondent-wife would not be entitled to any maintenance. By referring to the provisions of Section 125 (4) Cr.P.C., the counsel submits that no wife shall be entitled to receive any allowance as a maintenance or an interim maintenance if the husband and wife are living separately by mutual consent. As per the counsel, the petitioner has paid the permanent alimony amounting to Rs.2,10,000/-, which would dis-entitle respondent-wife to claim maintenance. The counsel also points out that the respondent-wife is employed with a school and as such, the plea raised by her that she does not have any source of income, movable and immovable property is mis-leading and false. The counsel would dispute the aspect of willingness expressed by wife to stay with the husband. In this regard, he seeks support from the fact that the petitioner-husband had filed a petition under Section 9 of the Act for restitution of conjugal rights, which he withdrew after compromise. This, as per the counsel, would clearly indicate that the wife is living separately out of her free will or atleast by mutual consent. The counsel has relied upon the photographs, Annexure P-15, to show that the respondent-wife is working in the school and as such, can not be heard saying that she is unemployed. Drawing parallel between Section 24 of the Act and Section 125 Cr.P.C., the counsel contends that for grant of maintenance pendentelite and litigation

expenses, burden is placed on the applicant to satisfy the Court, atleast prima-facie, as to what is the income of the spouse and where it is not done, the grant of interim maintenance and the amount so assessed cannot be sustained. In this regard, he has referred to the cases of ***Surjit Kaur Vs. Amarjit Singh,*** 1998 (2) Civil Court Cases 614 (P&H) and ***Ramesh Chander Data Vs. Meera***, 1990 Civil Court Cases 262 (Rajasthan). He has also relied upon ***Govind Singh Vs. Smt.Vidya***, 1999 (3) Civil Court Cases 219 (Rajasthan) to urge that where a spouse voluntarily incapacitates himself from earning, then he is not entitled to claim maintenance from the other spouse.

Respondent-wife, appearing in person, faced the legal onslaught of the counsel and countered all these contentions with reasonable assurance as can be expected from one appearing in person. She, in her own simple manner, succeeded in pointing out that the petitioner-husband did not pay the permanent alimony, which he had agreed and on that count, the proceedings for grant of mutual divorce could not be further pursued. She would submit that it is the conduct of the husband in backing out from the agreement that led to this situation and as such, the husband-petitioner cannot be permitted to take advantage of his own wrong or allowed to urge that the respondent-wife is staying separately because of mutual consent. Talking about application filed under Section 9 of the Act, the respondent-wife submits that the said application was filed on 22.8.2000 and was withdrawn on 25.8.2000 without being taken up by the Court or issuance of a notice to her. She would accordingly impute motive to the petitioner by saying that he was doing for taking

advantage of the same which he should not be allowed to take. Wife submits that petitioner is the only child of his mother, who is running a school having substantial income. As per wife, the petitioner is an income-tax payee. He is maintaining a car. His mother is separately income tax assessee. Both are having Permanent Account Numbers. In this regard, she would refer to ***Vinod Dulerai Mehta Vs. Kanak Vinod Mehta,*** AIR 1990 Bombay 120 to say that the income-tax return is not the sole guide for determining income of party in a proceedings under Section 24 of the Act but various other factors would also be relevant. Disputing the fact that the petitioner has paid any permanent alimony, respondent-wife would submit that there is no receipt or any other evidence or documentary proof, which would substantiate the claim of the petitioner that any such amount was paid by him. She would rather plead that the conduct of the petitioner is such that he does not deserve any indulgence as he has backed out of the compromise.

From the facts pleaded as noticed in detail, it is clear that the parties are staying separately but this separation cannot be said to be by a mutual consent. Such a contention may have been available if the husband had stuck to the conditions of the compromise and thereafter the parties had started living separately. The respondent-wife has very forth-rightly submitted that this compromise was reached between the parties before the DSP and that she had also signed the petition prepared for seeking divorce on the ground of mutual consent but still, the same was not presented and pursued further as the petitioner had backed out and failed to perform his part of the compromise regarding payment of

Rs.2,10,000/-. This petition was not filed and it shall give an indication that the separation could not be termed ***"by mutual consent".*** It will be totally unjustified to say, having regard to these circumstances, that the petitioner and respondent are living separately by mutual consent. The respondent-wife is further justified in submitting that the petitioner would not have any proof to show that this amount stated to have been paid was ever paid to her. In fact, she is very candid in her response to the fact that she had worked for some time as a teacher in Sargodha National Public Sr.Sec. School, which according to her, was against a leave vacancy. She has not disputed the photographs that have been produced on record but would rely on an affidavit, Annexure P-16, to say that she had worked as a teacher on the post being vacated by another teacher who had proceeded on maternity leave and immediately after joining of the said teacher, she was relieved of her duties. She had even expressed her willingness to come and stay with the petitioner-husband in the said affidavit, which is obviously not acceptable to him. Under these circumstances, it cannot be said that petitioner and respondent wife are staying separately by way of mutual consent. It can also not be said that the respondent-wife is employed or is in a position to maintain herself, which could dis-entitle her to claim maintenance from the husband. She was also justified in submitting that the issue of her being employed in the school permanently or that she had incapacitated herself from earning and, thus, would be dis-entitled to claim maintenance, is a fact which would be subject to proof during the course of proceedings. At this stage, parties are yet to prove their respective

stands and present revision is directed only against the order granting interim maintenance. The parties have yet to establish these facts by leading evidence. It is yet to be adjudicated. Similarly, the parties are yet to establish about the payment of a sum of Rs.2,10,000/- as permanent alimony and on that ground the respondent-wife cannot be denied interim maintenance. I also find that the trial Court has relied upon and referred to the income-tax return of the petitioner-husband, which indicated that he was having an income of Rs.56,100/- from his business. In case Vinod Dulerai Mehta (supra), the Court has rightly observed that it being a common knowledge that income-tax returns do not reflect the true picture of the income of the party for several reasons and cannot be taken as a sole guide for determining the income. The contention of the petitioner that this income included that of his parents and that he was getting a salary of Rs.2,000/- per month being a Managing Partner is again a fact which is required to be established and apparently cannot be accepted merely on being asserted by him. The Court was conscious enough to notice that the petitioner is to look after his minor daughter and his mother while granting the interim maintenance. Counsel for the petitioner could not contest the plea raised by the respondent that mother of the petitioner is a separate income-tax assessee and is running a school and also the fact that the petitioner is a sole child of his parents. The petitioner cannot be permitted to say that he is in a position to maintain car in a salary of Rs.2,000/-, which he is statedly getting. The petitioner is living in his own house with his family and his life style can rightly be taken into consideration and so also the house hold expenses. Considering all

these aspects, no infirmity is seen or noticed in the impugned order.

There is no merit in the petition and the same is hereby dismissed.

February 07, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**